

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: July 08, 2015*
Judgment Delivered on: July 21, 2015

+ **RFA (OS) 37/2015**

ANIL GULATI Appellant
Represented by: Mr.Vijay K.Gupta, Advocate with
Mr.Mehul Gupta, Advocate

versus

PROMILA GULATI Respondent
Represented by: Mr.Pankaj Nagpal, Advocate with
Mr.Rajiv Bajaj, Advocate

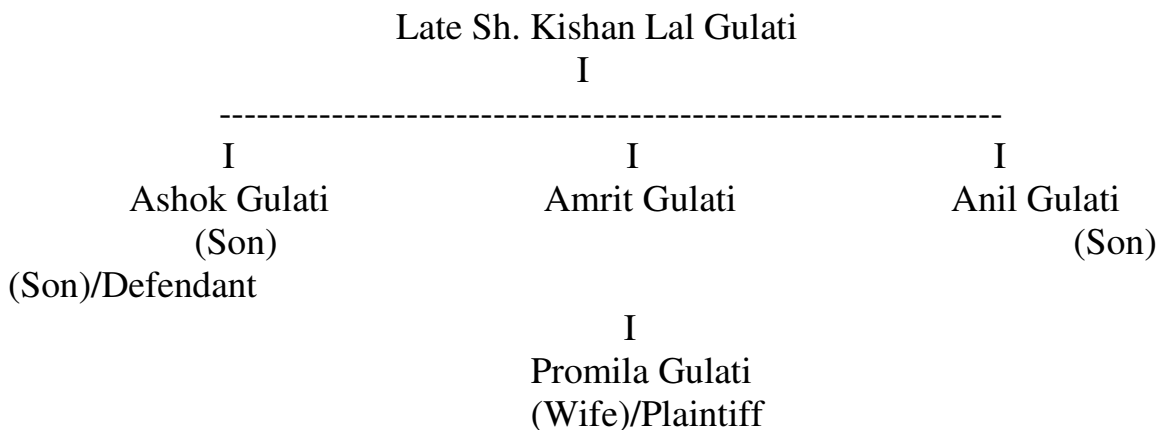
CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The dispute in the present appeal is between the son of Late Sh.Kishan Lal Gulati and the daughter-in-law of Late Sh.Kishan Lal Gulati.
2. The genealogy tree of the family of Late Sh. Kishan Lal Gulati is as under:-



3. Ms.Promila Gulati instituted a suit for permanent and mandatory injunction and mesne profits in the year 2010 against Mr.Anil Gulati

(brother of her late husband) in respect of property bearing Municipal No.205, AGCR Enclave, Delhi – 110 092 (hereinafter referred to as the ‘Suit Property’).

4. Needless to state, Ms.Promila Gulati was the plaintiff and her brother-in-law was the defendant in the suit. In our decision we shall be referring to the parties by their nomenclature in the suit.

5. In essence, it was pleaded in the plaint that the plaintiff is the absolute owner of the suit property by virtue of a registered Gift Deed dated September 03, 1984 executed by her father Late Sh.K.B.Midha. She pleaded that the suit property consisted of a ground, first, second and a mezzanine floor and a terrace. She pleaded that the plaintiff along with her children resides on the ground floor of the property. She further pleaded that on account of close family relation between the plaintiff and defendant, as also the fact that the defendant did not own any residential property, the plaintiff allowed the defendant to reside with his wife and children on the first, second and mezzanine floors of the property. She pleaded that no rent was being charged, the possession was permissive and thus the status of the defendant in the suit property was that of a mere licensee. She pleaded that on two occasions she terminated the license of the defendant to reside in the suit property, firstly orally in the year 2009 and thereafter by way of a legal notice dated May 03, 2010, but the defendant failed to vacate the suit property, which constrained the plaintiff to file the suit in question. Mandatory injunction sought was that the defendant should remove all his belongings from the suit property. Permanent injunction sought was that the defendant be permanently restrained from creating any third party interest in the suit property, parting with possession of the suit property in favour of any third party and interfering with the peaceful possession of the plaintiff in

the suit property. In addition thereto, the plaintiff also sought a decree against the defendant for a sum of ₹50,000/- (Rupees Fifty Thousand only) per month for having illegally occupied the suit property from the date of filing of suit till its realization.

6. It is apparent from the pleadings in the plaint that the plaintiff claims title to the suit property under the title document being the registered gift deed dated September 03, 1984 under which her father gifted the suit property to her.

7. In the written statement filed, the defendant essentially pleaded that the plaintiff is the benami owner of the suit property. It was admitted that the plot on which the building was constructed was owned by Late Sh.K.B.Midha, the father of the plaintiff. It was pleaded that the gift deed was a devise because Late Sh.Kishan Lal Gulati (father of defendant/father-in-law of plaintiff) had paid a sale consideration to Late Sh.K.B.Midha and the gift deed in question was a result of the said alleged sale transaction. It was pleaded that during his lifetime Late Sh.Kishan Lal Gulati, from out of his own funds, and that of the joint family raised the construction of a building on the plot.

8. In order to clearly understand the pleadings in the written statement relating to the character of suit property and status of ownership of the plaintiff in the suit property, it would be relevant to reproduce paragraph 6 of the written statement. It reads as under:-

“6. That the present suit filed by the plaintiff is not maintainable as the plaintiff has not approached this Hon’ble Court with clean hands. It is settle proposition of law that a person who approached the Court with unclean hands is not entitle for any relief not to speak of discretionary relief. The plaintiff herein has concealed the material facts from this Hon’ble Court and has not stated true facts before this Hon’ble

Court.

It is submitted that the father-in-law of the plaintiff and father of the defendant namely Sh.Krishan Lal Gulati was blessed with three sons and one daughter. The names of the sons of Sh. Krishan Lal Gulati are Sh.Ashok Gulati, Sh.Amrit Gulati husband of the plaintiff and Anil Gulati/defendant. Initially the father of the replying defendant was carrying on the business of Footwear under the name and style of M/s Sunshine Sandle Works as a Proprietor from the Shop No. 35, D.B.G. Market, Karol Bagh, New Delhi prior to 1960. Where he was joined by his three sons Ashok Gulati, Amrit Gulati (the husband of the plaintiff) and Anil Gulati (the defendant herein) one by one. And the said firm was converted into the partnership firm.

It is worthwhile to note that during the period of aforesaid business Shri Krishan Lal Gulati purchased one shop bearing No. 6, D.B.G. Market, in the names of Shri Ashok Gulati and Shri Amrit Gulati from the funds of the partnership firm.

Later on as the business flourished one more firm was opened in the year 1984-85 by the name of Sunshine Footwear which started functioning from 6, D.B. Gupta Market, locality as Sunshine Foot Wears. While Sunshine Sandle Works continued to be run by Mr.Krishan Lal Gulati and Ashok Kumar Gulati, the day to day affairs of Sunshine Footwears was being looked after by Amrit Gulati and Anil Gulati.

It is worthwhile to note that the creation of new firm and retirement of aforesaid partners namely Amrit Gulati and Anil Gulati from M/s Sunshine Sandle Works was an internal arrangement and family continued to remained joint and the business was also joint. The powers of total control and important decisions however remained with Late Krishan Lal Gulati in respect of both the firms. He being the head of family and founder of both the firms.

Ashok Gulati and Amrit Gulati were married prior to 1984 and Anil Gulati got married in 1998. Krishan Lal Gulati with his wife, all his children two daughters in law and grand children

used to live at Subhash Nagar in Delhi House No. 1/60 in a Joint family arrangement. House being owned by Krishan Lal Gulati.

Exactly at about this time it came to be known that the father of the plaintiff herein late K.B.Midha, who was also the father in law of elder brother of the defendant herein, was looking for a buyer to well which he acquitted in the AGCR Enclave, Delhi. Accordingly Late Krishan Lal Gulati paid the price of the plot to Late K.B.Midha who in turn executed a Gift Deed in respect of the plot in favour of his daughter Smt.Promila Gulati – the plaintiff herein and the factum of purchase of the aforesaid property against the consideration by way of Gift Deed is duly witnessed by the witness Harbans Lal who can come and depose on the same. Moreover it is an admission of the plaintiff as well as her husband Amrit Gulati that the entire sale consideration amount was paid by the father of the replying defendant and the same was duly recorded during the conversation which falsify the case of the plaintiff.

After having purchased the suit property it was decided to construct it into two parts, first family of Amrit Gulati will shift there and then Anil Gulati & his parents will shift there. Accordingly the father of the replying defendant raised the construction from his own funds and from the funds of joint business by the year 1986. The entire ground floor and one room on the first floor was completed and his family shifted in the suit property and started residing therein.

It will not be out of place to mention herein that in the year 1985 a flat bearing No.EA-39, SSF Area G-8, Maya Enclave, New Delhi was purchased by the father of the replying defendant in the name of the wife of Sh.Ashok Gulati and the family of Sh.Ashok Gulati shifted there.

Somewhere in the year 1988 the defendant met with an accident and as a result of which the replying defendant along with his parents shifted to the suit property before raising the construction on the first floor and second floor which was decided amongst the family members. Then the father of the

replying defendant as well as replying defendant raised the constructions on the first floor and second floor in the year 1989-1990 and as per the agreement amongst the parties after the completion of the first floor and second floor the replying defendant who was unmarried at that time started residing along with his parents on the first floor and second floor of the property bearing No. 205, AGCR Enclave, Delhi.

It is worthwhile to note that in the year 1990 a plot at Rohini was allotted to Sh.Amrut Gulati and the payment of which was made from the joint account and from the funds of the business. In the year 1991 division of business took place in the family and by virtue of which the replying defendant and Amrut Gulati started their business and created therein own separate firm under the sole proprietorship firm from the same premises i.e., D.B.G.Market, Karol Bagh, New Delhi. The ground floor was retained by Sh.Amrut Gulati who started his firm in the name and style of Sun Shine Sales Corpn. and mezzanine floor was remained with the defendant from where the defendant started his own business in the name and style of Like Shoes.

At the same time understanding was reached among the family members and it was decided and agreed that Amrut Gulati through his wife shall remain the owner of the ground floor of the suit property apart from the plot at Rohini and replying defendant shall be the owner of the first floor and second floor of the suit property. It was decided that eldest son Shri Ashok Gulati will be the owner of the flat at Mayapuri. It was also decided that after the demise of the parents of the replying defendant the property at Subhash Nagar shall go to Ashok Gulati and it was the fair distribution of the properties created and earned from joint funds, amongst the three sons and as such the defendant is the owner of the property bearing No. 205, AGCR Enclave, Delhi except the ground floor. The plaintiff is under obligation to honour the agreement.

It is worthwhile to note that plaintiff is a house wife with having no independent source of income and could not have paid the consideration amount to her father for getting the Gift Deed in her favour nor did she has any money to raise the construction

*on the suit property on any portion. The claim of the plaintiff is false, frivolous and baseless and against the family arrangement which she is under obligation to respect and honour the same. The defendant is having sufficient proofs to show that the construction was raised from the funds of his father and joint funds and, therefore, on account of concealment of material facts the suit of the plaintiff is liable to be dismissed. Moreover as submitted above the plaintiff have no right, title and interest in the property except the ground floor hence the suit of the plaintiff is liable to be dismissed with heavy costs.” **(Emphasis Supplied)***

9. In the replication filed, the plaintiff denied the averments made by the defendant in the written statement, particularly the averment(s) that the plaintiff is a benami owner of the suit property. It was pleaded that Late Sh.K.B.Midha, the father of the plaintiff, gifted the plot over which the suit property is constructed out of love and affection for his daughter i.e. the plaintiff; that the plaintiff had raised constructions on the said plot from the funds of her istridhan and savings. It was specifically pleaded that the defence of benami ownership of the plaintiff over the suit property raised by the defendant is barred in law by virtue of the provisions of sub-Section (2) of Section 4 of Benami Transaction (Prohibition) Act, 1988.

10. After completion of pleadings, the plaintiff filed an application under Order XII Rule 6 of the Code of Civil Procedure praying for a decree on admission; essentially on the grounds that: - (i) the written statement filed by the defendant shows that the defendant has admitted the execution of registered Gift Deed dated September 03, 1984 by Late Sh.K.B.Midha whereby he gifted the plot upon which the building was erected to his daughter i.e. the plaintiff; and (ii) defence of benami ownership of the plaintiff over the suit property pleaded by the defendant is barred by virtue of provisions of sub-Section (2) of Section 4 of Benami Transaction

(Prohibition) Act, 1988.

11. The defendant opposed the application on the ground that the defence of benami ownership of the plaintiff over the suit property taken by the defendant in his written statement is not barred in view of two exceptions relating to the defence of benami ownership contained in sub-Section (3) of Section 4 of Benami Transaction (Prohibition) Act, 1988.

12. Vide impugned judgment and decree dated February 12, 2015, the learned Single Judge has allowed the application filed by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure and has decreed the suit as regards prayer(s) for permanent and mandatory injunction made by the plaintiff.

13. Briefly stated the reasons by the learned Single Judge are as under:-

a) Defence of benami ownership of the plaintiff over the suit property taken by the defendant is barred by virtue of provisions of sub-Section (2) of Benami Transactions (Prohibition) Act, 1988. In so concluding, the learned Single Judge has placed reliance upon the decisions of this Court reported as 2014 (140) DRJ 511 Peeyush Aggarwal vs. Sanjeev Bhavnani and 187 (2012) DLT 164 P.E. Lyall vs. Balwant Singh and an unreported decision of this Court dated July 16, 2013 in CS (OS) No.1828/2012 titled as 'Ramesh Advani vs. Hiro Advani'.

b) The case set up by the defendant in his written statement that an oral family settlement was arrived between the family of Late Sh.Krishan Lal Gulati whereby the first, second and mezzanine floors of the suit property fell into the share of the defendant cannot be pleaded in view of the facts that:- (i) defendant has not disputed that the Gift Deed dated September 03, 1984 whereby the father of plaintiff gifted the plot on which the suit property was constructed to the plaintiff is a registered document; (ii)

defendant has also not disputed that on basis of Gift Deed dated September 03, 1984, a Conveyance Deed dated October 12, 2000 in respect of the suit property has been registered in favour of the plaintiff; (iii) defendant has taken no steps for cancellation of Gift Deed dated September 03, 1984 and Conveyance deed dated October 12, 2000 and no proceedings are pending in said regard and (iv) no written document has been placed on record by the defendant to show/indicate that Late Sh.Kishan Lal Gulati (father of defendant/father-in-law of plaintiff) had paid sale consideration of the plot on which the suit property was constructed to Late Sh.K.B.Midha (father of the defendant) upon which Late Sh.K.B.Midha had executed Gift Deed dated September 03, 1984 in respect of said plot in favour of the plaintiff.

c) The pleas raised by the defendant in his written statement cannot be accepted in view of prescription(s) contained in Section 91 of Evidence Act, 1872 which provide that where the terms of a contract have been reduced in the form of a document and where the matter is required by law to be reduced in the form of a document, no evidence shall be given in proof of the terms of such document except the document itself and Section 92 of Evidence Act, 1872 which provides that where the terms of the contract required by law to be reduced in the form of a writing have been proved according to Section 91, no evidence of any oral agreement for the purposes of contradicting, varying, adding to, or subtracting from its terms shall be admitted. In so concluding, reliance has been placed upon by the learned Single Judge on the decisions reported as 207 (2014) DLT 172 M/s Kusum Enterprises & Ors vs. Vimal Kochhar & Anr and (2003) 6 SCC 595 Roop Kumar vs. Mohan Thedani and an unreported decision of this Court dated November 10, 2014 in CS (OS) No.303/2011 titled as 'Far East Marketing (P) Ltd. vs. Khurana Electricals'.

d) No trial is required in the matter in view of the fact that the defence raised by the plaintiff is a moonshine. In so concluding, reliance has been placed upon by the learned Single Judge on the decisions reported as (2000) 7 SCC 120 Uttam Singh Duggal & Co Ltd vs. United Bank of India, JT 2012 (9) SC 214 M/s Payal Vision Ltd. vs. Radhika Choudhary and 2000 (56) DRJ 590 Zulfikar Ali Khan (dead) through LRs & Ors vs. Straw Products Limited & Ors and an unreported decision of this Court dated July 18, 2011 in CS (OS) No.2362/2008 titled as 'Rameshwar Prasad Gupta vs. Rajinder Kumar Gupta & Ors.'.

14. Aggrieved by the aforesaid, the defendant has filed the present appeal under Section 96 of the Code of Civil Procedure.

15. Arguing the appeal learned counsel for the appellant made two broad submissions as under:-

A The learned Single Judge failed to appreciate the pleadings made by the defendant in his written statement in correct perspective. When meaningfully read, the pleadings in the written statement of defendant implies that the suit property, even if assumed to be personal property of plaintiff, was thrown into hotch potch of the Joint Hindu Family (family of Late Kishan Lal Gulati) and became joint family property by virtue of the operation of rule of blending.

B The learned Single Judge has not adverted to sub-Section (3) of Benami Transaction (Prohibition) Act, 1988 despite a specific plea taken before him, that the defence of benami ownership of the plaintiff over the suit property taken by the defendant in his written statement is not barred in view of the two exceptions relating to the defence of benami ownership, contained in sub-Section (3) of Section 4 of Benami Transactions (Prohibition) Act, 1988. Counsel argued that a meaningful reading of the

written statement of the defendant goes to show that the defence of benami ownership of the plaintiff taken by the defendant clearly fell within the two exceptions relating to benami ownership contemplated in sub-Section (3) of Section 4 of Benami Transactions (Prohibition) Act, 1988.

C The learned Single Judge committed an error in granting prayer for decree of admission made by the plaintiff for the reason the real import of the transaction whereby the father of the plaintiff gifted the plot over which the suit property was constructed to the plaintiff and status of ownership of the plaintiff over the suit property could be determined only after trial. It was argued that merely on the ground of bar contained in Section 4 of the Benami Transactions (Prohibition) Act, 1988 the suit could not have been decreed at the preliminary stage. In said regards, heavy reliance was placed upon the decision of the Supreme Court reported as (2012) 5 SCC 342 Marcel Martins vs. M. Printers & Ors and decision of learned Single Judge of this Court reported as AIR 1992 Delhi 352 Mahinder Singh vs. Pardaman Singh.

16. The rule of blending was explained by the Supreme Court in the decision reported as (1961) 3 SCR 779 Mallesappa Bandedappa Desai & Anr vs. Desai Mallappa alias Malesappa & Anr in the following terms:-

“The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns separate property of his own may be deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of a coparcener of the owner’s conduct

and get thrown into the common stock of which it becomes a part. The doctrine, therefore, postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention of benefit the members of the family by allowing them the use of the income coming from the said property may not be necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenary and coparcenary property as well as the existence of the separate property of a coparcener.”
(Emphasis Supplied)

17. To repeat: the dictum of law laid down by the Supreme Court in *Mallesappa*'s case (supra) is that: '*The doctrine of blending postulates that **the owner of the separate property is a coparcener** who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property*'.

18. Being the daughter-in-law of Late Sh.Kishan Lal Gulati, the plaintiff cannot be a coparcener in the Hindu Undivided Family of Late Sh.Kishan Lal Gulati and thus the rule of blending has no application in the present case. As a necessary corollary thereof, the first argument predicated upon the rule of blending raised by the appellant must fail.

19. The Benami Transactions (Prohibition) Act, 1988 was enacted to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto.

20. Section 2(a) of the Benami Transactions (Prohibition) Act, 1988 defines '*Benami Transaction*' to mean '*any transaction in which property is transferred to one person for a consideration paid or provided by another*

person’.

21. Section 3 of the Benami Transactions (Prohibition) Act, 1988 prohibits benami transactions and reads as under:-

“(1) No person shall enter into any benami transaction.

(2) Nothing in this sub-section (1) shall apply to the purchase of the property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters to any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable.”

22. Section 4 of the Benami Transactions (Prohibition) Act, 1988, which is at the centre of controversy in the present case, reads as under:-

“(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply-

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family.

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such fiduciary capacity.”

23. It is apparent that no defence in respect of any property can be raised against the person in whose name the property is held on the plea that the property is held benami, with the exception that where the person, in whose name the property is held, is a ‘coparcener’ in the Hindu Undivided Family and the property is held for the benefit of the coparceners of the property or where the person in whose name the property is held is a trustee or stands in a fiduciary capacity to another.

24. From a reading of Section 4 of the Act, it is obvious that for a valid defence if raised by the defendant, to bring the case in the exception provided in clause (a) of sub-Section (3) of Section 4 of the Benami Transactions (Prohibition) Act, 1988, following three requisites are essential to be pleaded:-

- (i) Existence of a Hindu Undivided Family;
- (ii) Plaintiff in whose name the suit property is held is a coparcener of the said Hindu Undivided Family; and
- (iii) Suit property is held by the plaintiff for the benefit of the coparceners in the family.

25. Section 4(3)(a) of the Benami Transactions (Prohibition) Act, 1988 uses the terms ‘Hindu Undivided Family’ and ‘Coparcener’. It needs no gainsaying that a ‘Hindu Coparcenary’ is a narrower body than the joint family; only such members of Hindu Undivided Family who acquire by birth interest in the joint or coparcenary property can be the members of the

coparcenary or coparceners. (See the decision of the Supreme Court reported as (1985) 2 SCC 321 State of Maharashtra vs. Narayan Rao). The exception contained in Section 4(3)(a) of the Act restricts its benefit only to property held by a '*coparcener in a Hindu Undivided Family*' as opposed to any '*Member*' of such family. It is so, because coparceners are recognized by law to jointly by birth inherit rights in the joint property of the family property and in the event such property stands in one of their names for the benefit of others, the Benami Act is declared to not come in the way. Such benefit however cannot be extended to all/any members of such family who do not have any vested right in the property and to whom such property devolves in their independent/separate capacity by way of intestate succession under the Hindu Succession Act.

26. We repeat, the plaintiff, being the daughter-in-law of the family is not a coparcener in the Hindu Undivided Family of Late Sh.Krishan Lal Gulati. In view of the fact that requisite (ii) noted above is not fulfilled, exception contained in Section 4(3)(a) of the Act has no application in the instant case.

27. This takes us to the second exception relating to plea of benami ownership contained in Section 4(3)(b) of the Benami Transactions (Prohibition) Act, 1988.

28. For the defence of a defendant to fall in the exception provided in clause (b) of sub-Section (3) of Section 4 of the Benami Transactions (Prohibition) Act, 1988, the defendant has to plead/establish that:-

- (i) Plaintiff in whose name the suit property is held is a trustee or was otherwise standing in a fiduciary capacity towards the defendant; and,
- (ii) Suit property was held by the plaintiff for benefit of defendant for whom she is the trustee or towards whom she stands in a fiduciary capacity.

29. The pleadings made in the written statement by the defendant have

been noted by us in great extenso in the foregoing paragraphs. There is not even a whisper in the entire written statement that the *‘plaintiff in whose name the suit property is held is a trustee or was otherwise standing in a fiduciary capacity towards the defendant and suit property was held by the plaintiff for benefit of defendant for whom she is the trustee or towards whom she stands in a fiduciary capacity’*.

30. In view of the fact that there are no averments in the written statement to bring the defence raised by the defendant within the exception provided by clause (b) of sub-Section 3 of Section 4 of Benami Transactions (Prohibition) Act, 1988, we concur with the view taken by the learned Single Judge that Section 4(3)(b) of Benami Transactions (Prohibition) Act, 1988 does not save the defence raised by the defendant from being barred in law.

31. We now deal with the judgments relied upon by the counsel appearing for the plaintiff.

32. In Martin Marcel’s case (supra), the property of the Municipality was in the tenancy of the mother of the parties; the Municipality floated a scheme to sell its properties to the occupants; however before the sale could be affected the mother passed away leaving two daughters, son and husband as her only legal heirs; though all the said heirs were in the occupation of the property but the Municipality insisted on sale/transfer of one legal heir only and for which reason the husband and daughters consented to transfer in the name of the son; the sale consideration was paid by the husband and the husband had bequeathed a Will bequeathing the property equally to the son and daughters.

33. It was in context of the aforesaid facts that the Supreme Court held the purchase of the property in the name of son to be in trust/confidence for

his sisters and his father and prohibition contained in Benami Transactions (Prohibition) Act, 1988 to be inapplicable. In essence, four facts which led the Supreme Court to hold the case to be covered by Section 4(3)(b) of the Act are as follows:- (i) flow of sale consideration of the property from the father (husband); (ii) the father and daughters being in occupation of the property; (iii) father and daughters having a right to purchase and having desired to purchase in the joint names but the purchase being effected in the name of the son only for the reason of the seller insisting on sale in a name of only one heir and (iv) the agreement between the parties recording the son holding the property in trust and for the benefit of father and daughters.

34. In Marcel Martin's case (supra), with reference to the existence of a fiduciary relationship in a given case, the Supreme Court observed as under:-

“38. In determine whether a relation is based on trust or confidence, relevant to determine whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case.”
(Emphasis Supplied)

35. In the absence of pleading(s) relating to existence of trust or fiduciary relationship in the written statement in the instant case, the decision in Marcel Martin's case (supra) has no application in the present case.

36. Likewise, the decision of learned Single Judge in Mahinder Singh's case (supra) turns on its own facts and has no application in the present case.

37. There is another aspect of the matter.

38. Revisiting the averments made in the written statement, we find that the defendant pleads that his father (father-in-law of the plaintiff) had purchased the plot over which the suit property is constructed from the

father of the plaintiff and thereafter raised construction over the plot from his own funds and that of joint family business. The defendant further pleads that various decisions were taken regarding distribution of joint family properties between the members of family, one such decision being that Amrit Gulati, the husband of the plaintiff, through his wife i.e. the plaintiff shall be the owner of the ground floor of the suit property while the defendant shall be the owner of the first and second floors of the suit property.

39. Who took the decisions: All the family members or only some? Where were the decisions taken? On what day, month or year were the decisions taken? Nothing has been pleaded. The averments in the written statement are as vague as vagueness can be.

40. Rules of pleadings stand crystallized under various rules of Order VI of Code of Civil Procedure. Rule 2 of Order VI reads as under:-

“2. Pleading to state material facts and not evidence – (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”

41. Highlighting that the mandate of the Rule is that the pleadings must contain a statement in the concise form of the material facts on which the party pleading relies for its claim or defence, it needs however be noted that Rule 4 of the same Order further expands by requiring particulars to be

given where necessary. Rule 4 of Order VI reads as under:-

“4. Particulars to be given where necessary – In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.”

42. In a leading pronouncement on the subject of pleadings, being the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi & Ors. vs. Nirmala Devi & Ors. highlighting how frivolous litigations are being instituted and how these frivolous litigations are choking the stream of justice, with reference to importance of pleadings, in sub-para A of para 52 of the decision, the Supreme Court observed as under:-

“A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and documents filed by the parties. This must be done immediately after suits are filed.”

43. In the decision reported as 1987 (2) SCC 555 Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College & Ors. highlighting the object and purpose of pleadings, in para 6, the Supreme Court observed as under:-

“6. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise.”

44. With reference to the decisions reported as 1974 (6) BLR 368 Pandu Dhongi Yerudkar vs. Ananda Krishna Patil & Anr. and AIR 1982 Bom 491 M/s Nilesh Construction Company & Anr vs. Mrs. Gangubai & Ors. in the

decision reported as AIR 1999 SC 1464 D.M.Deshpande & Ors vs. Janardhan Kashinath Kadam & Ors, in paras 9 and 11, the Supreme Court highlighted that a vague plea does not justify an issue being settled and further, where no material in support of a plea has been set up anywhere in any form, the Court would be justified in not settling an issue requiring the parties to traverse the torturous path of a trial. In said case, the Supreme Court observed qua claim for tenancy that in the absence of a concise statement of material facts relating to the tenancy, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue. The Court cautioned against a pedantic approach to the problem and directed that Courts must ascertain the substance of the pleading and not the form, in order to determine the same. It was observed that pertaining to a claim of tenancy, the exact nature of the right which is claimed is to be set-forth and no issue pertaining to existence of tenancy could be framed on a vague plea.

45. In the decision reported as 2012 (6) SCALE 340 A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam it was held as under:-

“27. The pleadings must set-forth sufficient factual details to the extent it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.”

46. In the decision reported as 2012 (5) SCC 370 Maria Margarida Sequeria Fernandes vs. Erasmo Jack de Sequeria the Supreme Court held as under:-

“72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass

appropriate orders.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject claim or pass decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

x x x

78. The Court must ensure that the pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.”
(Emphasis Supplied)

47. The written statement filed by the defendant lacks in material particulars and it has to be held that the so-called pleadings relating to an oral family settlement being arrived at between the parties contained in the written statement are no pleadings in the eyes of law. From the afore-noted decisions, it can be safely culled out that a vague plea, sans the particulars thereof, would be no plea in the eyes of law and no issue can be settled between the parties in relation thereto and no trial is warranted.

48. In view of above discussion the instant appeal is held to be devoid of any merit and is thus dismissed with costs against the appellant and in favour of the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 21, 2015

mamta